U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA M. LETCHFORD and U.S. POSTAL SERVICE,
POST OFFICE, McKeesport, PA

Docket No. 99-1199; Submitted on the Record;
Issued November 7, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's application for review on October 26, 1998.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[1] On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.[2]

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.[3] This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[4]

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[1] 5 U.S.C. §§ 8101-8193.

[2] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[3] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[4] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.[5] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[6]

In this case, appellant, then a 45-year-old distribution clerk, filed a claim on July 25, 1997 alleging that she sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated February 12, 1998, the Office denied her claim on the grounds that she did not establish any compensable employment factors.

Appellant requested reconsideration by letter received on July 8, 1998, and in a decision dated October 26, 1998, the Office denied appellant's request on the grounds that the evidence and arguments presented were insufficient to warrant reopening appellant's claim for merit review. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant attributed her emotional condition in part to an April 8, 1997 verbal exchange between herself and Mary Shields, a carrier supervisor. Appellant stated that, when she questioned Ms. Shields' authority to perform a particular task, Ms. Shields responded: "I can do anything I want when I [a]m counting mail." Appellant stated that she then went to fetch Duane Schultz, a mailhandler, to perform the task instead. In a signed statement, Mr. Schultz stated that when he arrived on the scene, supervisor, Ms. Shields said to him: "[Appellant] does n[o]t know who she [i]s dealing with" and "I [wi]ll nail her butt to the wall," and further commented on the fact that appellant did not have permission to take the smoking breaks she had been taking.

To the extent that disputes and incidents alleged as constituting harassment by coworkers and supervisors are established as occurring and arising from appellant's performance of her regular or specially assigned duties, these could constitute employment factors.[7] Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment.[8]

In this case, the evidence does not establish harassment or verbal abuse by Ms. Shields on April 8, 1997. The statement submitted by appellant establishes only that Ms. Shields

[5] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[6] *Id.*

[7] *See Pamela R. Rice*, 38 ECAB 838 (1987).

[8] *Janet D. Yates*, 49 ECAB ___ (Docket No. 95-2859, issued December 19, 1997); *David W. Shirey*, 42 ECAB 783 (1991).

affirmed her authority to perform the task at hand and reveals no evidence that she physically threatened appellant or otherwise acted abusively toward her. While the statement of Mr. Schultz confirms that Ms. Shields may have made some additional comments about appellant, there is no evidence in the record that these statements were made in appellant's presence. In addition, although the Board has recognized the compensability of verbal abuse in certain circumstances, every statement uttered in the workplace will not give rise to coverage under the Act.[9] Appellant has not explained how such isolated comments by Ms. Shields would constitute verbal abuse or otherwise fall within coverage of the Act.[10]

Appellant also asserted that on June 25, 1997 another supervisor, Dan Mester, screamed at her on the workroom floor, causing her to have an acute anxiety attack and go home sick. She asserted that, at the time of the alleged incident, Mr. Mester was aware that she was under psychiatric care. Appellant did not give any details of the incident, explain the cause of it or indicate what was allegedly said by Mr. Mester. She did not submit any statement from witnesses to the incident.

Appellant did submit a letter dated September 10, 1997 from Sandy Matthews to the national union, in which appellant describes the June 25, 1997 incident. However, this document does not give any names or dates in outlining an incident between an employee and a supervisor. Due to its lack of specificity the account is of little value in establishing the truth of the matters asserted.

In a written statement, Mr. Mester denied screaming at appellant and stated that at 5:20 a.m. on June 25, 1997 he directed appellant to pull her cases, and then left the area. When he returned at 5:30 a.m., appellant was gone and as he started to look for her, she returned to the area through the door to the dock. Mr. Mester stated that he again directed appellant to pull cases, commented to her that this was the second time that she had been out on the dock since she started, and reminded her that she had complained to him in the past about other employees taking a break on the dock when it was time to pull cases.

Mr. Mester stated that he then began to walk away, but appellant said that she wanted to discuss the matter further, at which time he again instructed her to pull her cases and walked away from the area. When he returned at 6:20 a.m., he observed appellant at the back doors talking to another employee. Mr. Mester stated that appellant then looked toward him and shouted something, but he could not ascertain what she said due to ambient noise in the vicinity. He stated that appellant then walked out the door and he thought she was going on break, but was later told by another employee that she had gone home.

The Board finds that the factual evidence shows an allegation directly rebutted, and that the evidence presented by appellant, lacking any convincing quality, does not constitute

[9] *Janet D. Yates, supra* note 8; *see Leroy Thomas, III*, 46 ECAB 946 (1995).

[10] *See, e.g., Alfred Arts*, 45 ECAB 530 (1994) and cases cited therein (finding that the employee's reaction to coworkers comments such as "you might be able to do something useful" and "here he comes" was self-generated and stemmed from general job dissatisfaction). *Compare Abe E. Scott*, 45 ECAB 164 (1993) and cases cited therein (finding that a supervisor's calling an employee by the epithet "ape" was a compensable employment factor).

probative, reliable evidence establishing abuse or unreasonableness in the administration of this personnel matter.[11]

Appellant alleged that, following the June 25, 1997 incident, she had difficulty with her pay and was placed in absent without leave (AWOL) status. The Board has held that matters involving the use of leave are administrative and personnel matters not related to an employee's regular or specially assigned duties. Appellant was initially placed on AWOL status because she left work on June 25, 1997 without notifying a supervisor. The following day, after she called in and explained her absence, she was placed on sick leave. However, it took several pay periods for the leave designation to be changed. Appellant's reaction to this matter does not constitute an employment factor as there is no evidence of error or abuse by the employing establishment in the administration of this personnel matter.[12]

Appellant also asserted that the employing establishment mishandled her claim for compensation. However, the development of any condition related to such matters would not arise in the performance of duty as the processing of compensation claims bears no relation to appellant's day-to-day or specially assigned duties.[13]

Appellant also asserted that her coworkers did not like her and would not talk to her because her actions on June 25, 1997 had caused a subsequent change in the smoking break policy. Appellant has presented no evidence that her coworkers made any statements or engaged in actions which could be construed as harassment.[14] The employing establishment submitted evidence that appellant herself received a seven-day suspension for threatening three coworkers. Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

Appellant also alleged that the new postmaster, Regis Murphy, turned the employees against each other, caused heightened tension and lowered moral among employees. The Board has held, however, that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.[15]

Finally, appellant generally asserted that the employing establishment engaged in unfair labor practices, employed double standards and practiced favoritism. She did not cite any specific incidents with respect to these allegations or otherwise explain the basis for these claims.

[11] *Margreate Lublin*, 44 ECAB 945 (1993).

[12] *See Kathleen D. Walker*, 42 ECAB 603 (1991).

[13] *See George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

[14] *See William P. George*, 43 ECAB 1159, 1167 (1992).

[15] *See Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty.[16]

The Board also finds that the Office did not abuse its discretion by denying appellant's application for review on October 26, 1998.

Following the decision dated February 12, 1998, appellant requested that the Office reconsider her case. In support of this request for reconsideration, appellant submitted copies of documents previously submitted, as well as an additional narrative statement in which she reiterated her prior arguments.

Section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of his or her claim under 5 U.S.C. § 8128(a) by written request to the Office identifying the decision and the specific issues within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed and by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.[17] Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.138(b)(1) will be denied by the Office without review of the merits of the claim.[18]

The Office, in denying appellant's application for review, properly noted that appellant had not submitted any new evidence relevant to the issue of performance of duty and appellant's arguments on reconsideration were essentially the same as those made previously, which had been fully considered by the Office in its prior decisions. Material which is repetitious or

[16] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

[17] 20 C.F.R. § 10.138(b)(1).

[18] 20 C.F.R. § 10.138(b)(2).

duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.[19] As appellant failed to raise substantive legal questions or to submit new relevant and pertinent evidence not previously reviewed by the Office, the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits.

The decisions of the Office of Workers' Compensation Programs dated October 26 and February 12, 1998 are hereby affirmed.

Dated, Washington, DC
November 7, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

[19] *See James A. England*, 47 ECAB 115 (1995)*; Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 35 ECAB 309 (1983); *Katherine A. Williamson*, 33 ECAB 1696, 1705 (1982).